

PT 01-54

Tax Type: Property Tax

Issue: Religious Ownership/Use

**STATE OF ILLINOIS
DEPARTMENT OF REVENUE
OFFICE OF ADMINISTRATIVE HEARINGS
CHICAGO, ILLINOIS**

**PENTECOSTAL
HOUSE OF KNOWLEDGE,
APPLICANT**

v.

**ILLINOIS DEPARTMENT
OF REVENUE**

**No. 00-PT-0068
(99-16-0677)
P.I.N: 16-16-101-023**

RECOMMENDATION FOR DISPOSITION

APPEARANCES: -, attorney at law, on behalf of the Pentecostal House of Knowledge (hereinafter referred to as the “applicant”).

SYNOPSIS: This proceeding raises the limited issue of whether real estate identified by Cook County Parcel Index Number 16-16-101-023 (hereinafter the “subject property”) was “used with a view to profit,” in violation of Section 15-40 of the Property Tax Code, 35 ILCS 200/1-1, *et seq*, during any part of the 1999 assessment year. The controversy arises as follows:

Applicant filed a Real Estate Tax Exemption Complaint with the Cook County Board of Review on December 9, 1999. (Dept. Ex. No. 1). The Board reviewed applicant’s complaint and thereafter recommended to the Illinois Department Of Revenue (hereinafter the “Department”) that the requested exemption be denied due to lack of proper documentation. (Dept. Ex. No. 2).

On August 17, 2000, the Department issued its initial determination in this matter, which found that the subject property “is not in exempt ownership in 1999.” Dept. Ex. No. 3. Applicant filed a timely appeal as to this denial and thereafter presented evidence at a formal administrative hearing. Following submission of all evidence and a careful review of the record, I recommend that the Department's initial denial be reversed.

FINDINGS OF FACT:

1. The Department's jurisdiction over this matter and its position herein are established by the admission into evidence of Dept. Ex. Nos. 1, 2 and 3.
2. The Department's position in this matter is that the subject property is not in exempt ownership in 1999. Dept. Ex. No. 3.
3. This subject property is located at 5301-5309 W. Madison Street, Chicago, IL 60644 and improved with a two-story church building. Dept. Ex. No. 2.
4. Applicant, a Pentecostal church, was incorporated under the General Not for Profit Act of Illinois on March 17, 1988. Its organizational objectives, as set forth in its by-laws, include teaching and promulgating the faith of Jesus Christ as set forth in the Holy Bible (Old and New Testaments), evangelization of Christ's word and establishing evangelical churches throughout the world. Applicant Ex. Nos.1,2;Tr. pp. 11-12.
5. Bishop Sylvester Calvin (hereinafter “Bishop Calvin”), a duly ordained Pentecostal minister, has been applicant's spiritual leader since its inception. Applicant Ex. No. 2; Tr. pp. 10-11.

6. Bishop Calvin and his wife, Marilyn, who is applicant's Assistant General Secretary, became nominal titleholders of the subject property pursuant to a trust deed dated July 19, 1996. Applicant Ex. Nos. 2, 6; Tr. p. 19.
7. Bishop and Mrs. Calvin assumed nominal title in this manner because applicant itself did not have sufficient assets to secure a bank loan or other financing that would enable applicant to afford the purchase price, which was \$80,000.00. The Calvins were, however, able to arrange for a purchase money mortgage which provided funds for the purchase. Tr. pp.19-20, 23.
8. The terms of this purchase money mortgage provided, *inter alia*, that: (1) applicant was to assume liability for all financial obligations due thereunder; but, (2) Bishop Calvin would assume personal liability for any and all monies due under the purchase money mortgage in the event of that applicant defaulted. Tr. pp. 23-25.
9. Applicant satisfied all of its financial obligations under the purchase money mortgage, which included making a \$20,000.00 down payment as well as monthly mortgage payments in the amount of \$544.21 and payment of all 1999 real estate taxes levied against the subject property, out of funds drawn from its corporate checking account.¹ Each of these checks were countersigned by Bishop Calvin and another one of applicant's corporate officers. Applicant Ex. Nos. 10, 11.
10. On September 21, 1999, the Calvins executed a quitclaim deed that transferred nominal title to, and all of their interest in, the subject property to applicant. Applicant Ex. No. 21.

1. The checks named the "Pentecostal House of Knowledge" and not Bishop Calvin or any other private individual, as maker of the checks. Applicant Group Ex. No. 10.

CONCLUSIONS OF LAW:

An examination of the record establishes that this applicant has demonstrated by the presentation of testimony or through exhibits or argument, evidence sufficient to warrant exempting the subject property from 1999 real estate taxes. Accordingly, under the reasoning given below, the determination by the Department that said property does not qualify for such exemption under 35 **ILCS** 200/15-40 should be reversed. In support thereof, I make the following conclusions:

Article IX, Section 6 of the Illinois Constitution of 1970 states as follows:

The General Assembly by law may exempt from taxation only the property of the State, units of local government and school districts and property used exclusively for agricultural and horticultural societies, and for school, religious, cemetery and charitable purposes.

Pursuant to Constitutional authority, the General Assembly enacted Section 15-40 of the Property Tax Code (35 **ILCS** 200/1-1, 15-40), wherein “[a]ll property used exclusively² for religious purposes,³ or used exclusively for school and religious purposes, or for orphanages and not leased or otherwise used with a view to a profit,” is exempted from real estate taxation.

Statutes conferring property tax exemptions are to be strictly construed so that all factual inferences, debatable legal questions and other disputed matters are resolved in favor of taxation. People Ex Rel. Nordland v. the Association of the Winnebago Home

2. The word “exclusively” when used in Section 200/15-40 and other property tax exemption statutes means the “the primary purpose for which property is used and not any secondary or incidental purpose.” Pontiac Lodge No. 294, A.F. and A.M. v. Department of Revenue, 243 Ill. App.3d 186 (4th Dist. 1993).

3. As applied to the uses of property, a religious purpose means “a use of such property by a religious society or persons as a stated place for public worship, Sunday schools and religious instruction.” People ex rel. McCullough v. Deutsche Evangelisch Lutherisch Jehova Gemeinde Ungeanderter Augsburgischer Confession, 249 Ill. 132, 136-137 (1911).

for the Aged, 40 Ill.2d 91 (1968); Gas Research Institute v. Department of Revenue, 154 Ill. App.3d 430 (1st Dist. 1987)).

The precise debatable question at issue herein is whether the subject property was “used with a view to profit” in violation of Section 15-40 because nominal title thereto was vested in two private individuals, the Calvins, rather than applicant itself, until September 21, 1999. For the following reasons, I conclude that said property was not so used.

First, it is well established that technical refinements of title are not determinative of ownership for property tax purposes. People v. Chicago Title and Trust, 75 Ill.2d 479 (1979); Chicago Patrolmen's Association v. Department of Revenue, 171 Ill.2d 263 (1996). Rather, the determinative indicia of ownership are the right to control the property and the right to enjoy its benefits. *Id.* Therefore, the mere fact that applicant did not hold nominal title until September 21, 1999 is neither legally significant nor decisive herein.

Second, our courts have recognized that, in some circumstances, exemptions should not be destroyed if practical business realities prevent an otherwise exempt organization from obtaining title in its own name. Christian Action Ministry v. Department of Local Government Affairs, 74 Ill.2d 51 (1978).⁴ There, the appellee-Ministry obtained its interest in the property by means of a contract for warranty deed. The terms of this contract provided, *inter alia*, that: (1) the Ministry was to make a

4. See also, Cole Hospital v. Champaign County Board of Review, 113 Ill. App. 3d 96 (4th Dist. 1983) (due to troubled financial history and unavailability of State revenue bonds, appellee employed conveyance and lease-back arrangement to obtain equitable title to property used for charitable purposes).

\$30,000.00 down payment and monthly payments of \$2,500.00 toward the purchase price;⁵ (2) the Ministry was to be liable for payment of any and all real estate taxes levied against the subject property; and, (3) no title, legal or equitable, was to pass to the Ministry until the deed was delivered or until the purchase price was paid in full. Christian Action Ministry, *supra*, at 54.

The court placed little if any significance on the last condition and specifically noted that:

Regardless of the status of title, [the Ministry] has a substantial monetary interest in the property and is liable for payment of real estate taxes. We cannot perceive any difference in kind between the conventional purchase money mortgage arrangement, which the Department concedes would qualify [the Ministry] for tax exempt status, and the contract for warranty deed which would justify disparate treatment for tax purposes. [Citations omitted].

Christian Action Ministries, *supra*, at 61.

This applicant acquired a “substantial monetary interest” in the subject property by paying the entire \$20,000.00 down payment, together with every one of the required monthly mortgage payments and all real estate taxes, out of its corporate checking account. Despite this, applicant could not afford to purchase the property by conventional means. Hence, business reality dictates that applicant needed some sort of surety to acquire any type of interest in the subject property.

Bishop Calvin and his wife, Marilyn, provided that surety through their signatures on the trust deed dated July 19, 1996. Those signatures were, on their face, those of private individuals. However, the Calvins’ respective positions as applicant’s Bishop and

5. The actual purchase price was unspecified in the court’s opinion. Christian Action

General Assistant Secretary vested them with inherent authority to act on applicant's behalf. Thus, for all the above-stated reasons, I conclude that the Calvins were acting as guarantors for applicant when signing that deed. Therefore, pursuant to Christian Action Ministries, *supra*, I conclude that the Calvins' nominal interest in the subject property did not constitute the type of disqualifying profit-oriented use contemplated by Section 15-40 of the Property Tax Code.

That nominal interest was extinguished via the quitclaim deed whereby the Calvins transferred their nominal interest in the subject property to applicant. Hence, applicant held nominal, equitable and legal title to the subject property as of the date of that deed, September 21, 1999. For this reason, and because the holding in Christian Action Ministries, *supra*, mandates that the Calvins held but a suretyship interest in the subject property until September 21, 1999, the Department's initial determination in this matter should be reversed.

Ministries, *supra*, at 54.

WHEREFORE, for the reasons set forth above, I recommend that Cook County Parcel Index Number 16-16-101-023 be exempt from 1999 real estate taxes under Section 15-40 of the Property Tax Code.

September 17, 2001
Date

Alan I. Marcus
Administrative Law Judge